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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/811,527

03/29/2004

Fred Naval Desai

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EXAMINER
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HAND, MELANIE JO

ART UNIT	PAPER NUMBER
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3761

MAIL DATE	DELIVERY MODE
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07/09/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/811,527

Applicant(s)

DESAI ET AL.

Examiner

Melanie J. Hand

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 April 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2, 5, 6, 9, 10, 12, 13 and 15-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5, 6, 9, 10, 12, 13 and 15-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/20/07</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 20, 2007 has been entered.

### ***Response to Arguments***

Applicant's arguments filed April 20, 2007 have been fully considered but they are not persuasive.

With respect to applicant's arguments regarding the rejection of the claims under 35 U.S.C. 102 as anticipated by Odorzynski: Applicant argues that Odorzynski does not teach a printed elastomeric composition. There is no support in the disclosure as originally filed for a printed elastomeric composition. Aside from the fact that a printed fluid composition is nearly physically impossible, there is only support in the disclosure for a printed substrate 35 that arises from application of said elastomeric composition being applied thereto. The composition itself is not printed.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., elastomeric members that are parallel or non-parallel with respect to one another in a single component of the claimed diaper) are not recited in the rejected claim(s). Although the claims are interpreted

Art Unit: 3761

in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicants' arguments with regard to dependent claims 2-4 and 16 and 18-22 have been fully considered but are not persuasive as Applicants' arguments depend entirely on Applicants' arguments regarding the rejection of claim 1, which have been addressed *supra*.

### ***Claim Objections***

Claim 28 is objected to because of the following informalities: the phrase "said printing method" lacks proper antecedent basis in claim 1 from which it depends. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-35 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. With respect to claim 1, there is no support in the disclosure as originally filed for a printed elastomeric composition. There is only support in the disclosure for a printed substrate 35 that arises from application of said elastomeric composition being applied thereto. Claims 2-35 are rejected because they depend from claim 1.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 5, 6, 9, 10, 12, 13, 15, 17 and 23-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Odorzynski et al (U.S. Patent No. 6,245,050).

With respect to **Claims 1,5,10**: Odorzynski teaches diaper 10 comprising backsheet 12, topsheet 14 and absorbent core 16. Elastomeric hot melt adhesive is applied to at least any one of the components of diaper 10, e.g. backsheet 12. The adhesive is applied via slot coating and therefore forms a continuous geometric pattern of rectilinear or curvilinear stripes on the diaper component substrate with a predetermined spacing between stripes. Since the backsheet 12 is a nonwoven thermoplastic film and the adhesive is a hot melt adhesive, Examiner asserts that the adhesive is capable of being applied to the substrate in such a manner as to be partially penetrate said substrate.

With respect to **Claims 8,9**: Odorzynski teaches an elasticized area width of 1.27-7.62 mm and a thickness of 2.54 –25.4 mm. (Col. 6, lines 52-58)

With respect to **Claim 12**: Since Odorzynski teaches slot coating, the at least two elements differ in their spacing from adjacent elements, i.e. the spacing between adjacent elements in the machine direction is less than the spacing between adjacent elements in the cross direction.

Art Unit: 3761

With respect to **Claim 13**: Odorzynski teaches strands or ribbons of the adhesive film that are applied to define an elasticized area, therefore the strands must overlap to form boundaries and a continuous elasticized area within the boundaries. (Col. 6, lines 21-27)

With respect to **Claim 15**: Odorzynski teaches waist elastics 38, leg cuffs 36 and fastening tabs 40 manufactured from the same adhesive film composition, therefore a component of diaper 10 having the elastic composition therein has an additional elastic material that is capable of being manufactured from an alternate suitable elastomeric adhesive.

With respect to **Claim 17**: Odorzynski teaches applying the elastic adhesive composition to at least one component of diaper 20. (Col 5, lines 49-51)

With respect to **Claims 23,24**: Odorzynski teaches that backsheet 12 is comprised of a nonwoven polyethylene web. (Col. 2, lines 35-38)

With respect to **Claim 25**: Odorzynski teaches that the component of the diaper containing the adhesive is necked. (Col. 6, lines 1-7)

With respect to **Claims 26,27**: Odorzynski teaches the elastic adhesive in film form sandwiched between the topsheet and backsheet to form an elasticized area. (Col. 5, lines 63-67)

With respect to **claim 30**: The thickness of at least one of the elastomeric areas taught by Odorzynski varies from one part of the member to another. This argument is based upon Odorzynski's teaching that the elastomeric adhesive is applied in the form of a film having a

Art Unit: 3761

range of thicknesses and that the elasticized areas contract to gather the components to which they are attached, which necessarily causes a variation in thickness. (Col. 6, lines 28-31, 50-58)

With respect to **claim 31**: The thickness is considered herein to vary discretely, in areas corresponding to the gathers created.

With respect to **claim 32**: Diaper 10 further comprises a plurality of first elastomeric members 46 that are parallel to one another and a plurality of second elastomeric members 44 that are parallel to one another, wherein the plurality of first elastomeric members and the plurality of second elastomeric members are non-parallel with respect to each other. (Fig. 2, Col. 5, lines 40-45)

With respect to **claim 33**: The plurality of first elastomeric members 46 and the plurality of second elastomeric members 44 differ in differing width dimensions between said first and second elastomeric members 46,44. (Fig. 1)

With respect to **claim 34**: The plurality of first elastomeric members 46 and the plurality of second elastomeric members 44 are perpendicular with respect to each other. (Fig. 1)

With respect to **claim 35**: The plurality of first elastomeric members 46 and the plurality of second elastomeric members 44 are applied in a single step continuous process. (Col. 5, lines 46-67)

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 28 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Odorzynski ('050).

With respect to **claim 28**: Odorzynski teaches slot coating as a method of printing any component of diaper 10, e.g. backsheet 12, and therefore does not teach any of the methods set forth in claim 28. However, the limitation of claim 28 contains product-by-process claim language. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” *In re Thorpe*, 777 F.2d 695, 227 USPQ 964 (Fed. Cir. 1985). See also MPEP § 2113. The burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir. 1983)

With respect to **claim 29**: Odorzynski teaches an elastomeric hot melt pressure sensitive adhesive, which includes polyurethane adhesives, adhesives set forth in applicant’s disclosure as a material for the claimed adhesive. When the structure or composition recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions presumed to be inherent (MPEP 2112-2112.01). A prima facie case of either anticipation or obviousness has been established when the reference discloses all the



Art Unit: 3761

limitations of a claim (in this case, an absorbent article having an elastomeric member) except for a property or function (in the present case, the melt viscosity of the elastomeric member) and the examiner can not determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof to applicant, as per *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

Claims 16 and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Odorzynski ('050).

With respect to **Claim 16**: Odorzynski teaches selecting the viscosity of the adhesives that can involve mixing adhesives as well as heating them. Odorzynski does not explicitly teach two different adhesives, however Odorzynski does teach applying the adhesives either by spray coating or film forming (Col. 6, lines 13-20) which would allow the application of different elastic adhesive compositions to one substrate. Examiner asserts therefore that it would be obvious to modify the adhesive area taught by Odorzynski so as to be comprised of two different adhesive compositions applied in two different patterns.

With respect to **Claims 18,19,20,22**: Odorzynski does not explicitly teach different elastic adhesives disposed on different components of diaper 10. However, since Odorzynski teaches various application methods for the elastic adhesive composition, various suitable materials for the composition itself, and teaches applying an adhesive to at least one component of diaper 10 (e.g. fastening tabs 40 to topsheet 14), it would be obvious to one of ordinary skill in the art to apply different adhesives in different patterns to different components of diaper 10, said differing adhesives exhibiting different elastic properties.

With respect to **Claim 21**: Fastening tabs 40 comprising an elastic adhesive form a right angle with topsheet 14 containing an elastic adhesive. (Fig. 1)

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Odorzynski ('050) in view of Himes (U.S. Patent No. 5,304,599).

With respect to **Claim 2**: Odorzynski does not teach a percent set for the elastomeric adhesive. Himes teaches an extrudable elastomeric composition including an elastomeric polymer and a tackifying resin having a percent set of 9%, which falls within the claimed range. ('599, Table 4). Himes teaches that this composition is suitable for extrusion onto an elastic sheet, therefore it would be obvious to substitute the composition taught by Himes for the adhesive composition as taught by Odorzynski so as to have a backsheet with the adhesive composition therein having a percent set of 9% as taught by Himes with a reasonable expectation of success.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand  
Examiner  
Art Unit 3761

June 28, 2007

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read 'T. Zalukaeva', written in a cursive style.